VII

INSTITUTIONAL BEGINNINGS

IN A

WESTERN STATE

"Jura dabat populis posito modo praetor aratro, . . .
Pascebatque suas ipse senator oves."—*Ovid.*

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History is past Politics and Politics present History — *Freeman*

SECOND SERIES

VII

Institutional Beginnings
IN A
WESTERN STATE

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Of the local institutions and public acts of the early settlers of Iowa no adequate records are to be found. There are many witnesses yet living who can state what they remember, and this is almost the only source of information. The early settlers thought no more of keeping permanent records of their public or social acts than they did of their individual labors. They plowed, sowed, built houses, barns, bridges, school-houses, punished disorderly persons, defended their homes against the Indians, all as the necessity or convenience of the time made desirable. In much of their ordinary work, by coöperation, they helped each other. It would require a wise man often to distinguish between acts which were not public and those which should be called such. The early settlers made no distinction and kept no permanent record of either. Even the claim associations upon whose acts the titles to their homes rested have left almost no records. There were scores of these organizations in the state, and, after extended inquiry, I find records of only one. These are the property of Colonel Trowbridge, of Iowa City, secretary of the Claim Association of Johnson County. He has kept a complete set of records for that county. In preparing the following sketch I have relied upon the personal testimony of living witnesses for much of the information used.

On the 17th of June, 1830, the miners of Dubuque assembled around an old cotton-wood log, stranded on an island, and appointed a committee of five miners to draw up regulations for their government. They reported the following: "We, a committee, having been chosen to draft certain rules and regulations by which we, as miners, will be governed, and, having duly considered the subject, do unanimously agree that we will be governed by the regulations on the east side of the Mississippi river, with the following exceptions, to wit:

"*Article* 1. That each and every man shall hold two hundred yards square of ground, working said ground one day in six.

"*Article* 2. We further agree that there shall be chosen, by a majority of the miners present, a person who shall hold this article and grant letters of arbitration on application having been made, and that said letters of arbitration shall be obligatory on the parties concerned so applying."

These articles were adopted and Dr. Francis Jarret was chosen as the "person who should hold the article and grant letters of arbitration." (Hist. Dubuque Co., p. 341). These are believed to be the first laws for the government of white men adopted on the soil of Iowa. These laws proceeded directly from the persons who were to be governed by them, viz.: Americans from across the river in the state of Illinois. They agreed to be governed by the regulations on the east side of the river with specific exceptions. The exceptions were written down; the "regulations," or the code of Illinois under which they agreed to live, each man carried in his own head.

They were miners; they came to work the lead mines. The land which they proposed to parcel out among themselves in squares of two hundred yards each belonged to the Sac and Fox Indians. For more than two years these miners carried on an unequal contest with the United States troops who were sent to protect the rights of the Indians. They were not

only governed by the "regulations on the east side," but they were compelled to live on the east side the greater part of the time. Yet they clung with desperation to their "claims," and when, by the terms of the Black-Hawk Purchase in 1833, the land came into the hands of the United States government, they were there to make good their "claims." The code drawn up by the cotton-wood log was still in force. Each took his claim as the code provides. As to the provision for arbitration in the settlement of disputes, the local historian remarks that they "generally took the law into their own hands."

In less than a year from June 10, 1833, when the Indian title was extinguished, more than two thousand persons were living in Dubuque. They had no authorized government. Congress had made no provision for settling the territory; the settlers provided for their own needs as best they could.

In May, 1834, occurred a cold-blooded murder. Patrick O'Connor shot George O'Keaf, apparently without provocation. Immediately after the shooting a great crowd assembled. O'Connor was asked why he had shot O'Keaf. He replied: "That is my business." The enraged miners proposed to hang him at once, but the more discreet advised that he be taken to town and the affair be fully investigated. This was done, and the 20th of May was set for the trial. A large crowd gathered. On motion Captain White was appointed to conduct the prosecution. The prisoner selected Captain Bates as his attorney. A jury of twelve men was chosen by the prisoner. They were seated on a log in front of him and he was asked if he had any objections to the jury. He said he had none. Witnesses were examined and brief addresses made by the attorneys. Captain Bates tried to persuade the citizens to send the accused across the river where he could be tried by law. Captain White replied that they had tried that plan before and the courts in Illinois held that they had no jurisdiction. The case went to the jury, and, after a brief conference, the following verdict was returned signed by every juryman in his own hand:

"We, the undersigned residents of the Dubuque Lead Mines, having been chosen by Patrick O'Connor and empanelled as a jury to try the matter wherein Patrick O'Connor is charged with the murder of George O'Keaf, do find the said Patrick O'Connor guilty of murder in the first degree, and ought to be, and is by us sentenced to be hung by the neck until he is dead; which sentence shall take effect on Tuesday, the 20th day of June, 1834, at one o'clock P. M."

During the month intervening before the sentence was to be executed a priest appeared as a friend of the prisoner, and a movement was made to have him released or pardoned. Application for pardon was made to the Governor of Missouri (Iowa had at one time been attached to Missouri). He replied that he had no authority in the case, and referred the petitioners to the President of the United States. President Jackson likewise replied that the laws of the United States had not been extended over the newly purchased territory, and that he had no authority in the case. He suggested that the pardoning power rested with those who had passed the sentence.

The 20th of June came. The town was policed with one hundred and fifty armed citizens. Minute preparations had been made for the hanging. At one o'clock the marshal, standing in a hollow square formed by armed citizens, gave the signal and Patrick O'Connor was executed. A collection was then taken to meet the expenses of trial, imprisonment, and execution.

This is believed to be the first instance of trial for murder within the limits of Iowa, and, if there was any default of justice, it was not on account of the technicalities of the law. Patrick O'Connor was not a victim of mob violence. He was rescued from the mob by lawfully disposed citizens. He had all the advantages of a fair trial which the circumstances of the case would admit.

Dubuque was a mining town. A large part of the early settlers were men without families, or whose families lived

elsewhere. Settlers came into other parts of Iowa before the Indian title was extinguished. At Burlington "claims" were taken as early as 1829, and settlers came in 1832. These were families who came to found homes. The first organization for local government occurred in 1833. From the list of resolutions adopted by these settlers only these two are preserved: (1) "*Resolved*, That any person or persons allowing the Indians to have whiskey on any account whatever shall forfeit all the whiskey he or they shall have on hand, and likewise the confidence and protection of this Association. (2) *Resolved*, That any person harboring or protecting a refugee who, to evade justice, has fled from other sections of the Union, shall be delivered with such refugee on the other side of the River." These may be accepted as typical fragments of many resolutions and by-laws adopted by settlers on the west side of the river during the few years in which they were left without authorized and efficient government.

In November, 1837, a convention was held in Burlington to consider the question of organizing a territorial government. The following is a portion of the memorial to Congress adopted by this convention: "From June, 1833, until June, 1834, a period of one year, there was not even a shadow of government or law in all western Wisconsin. In June, 1834, Congress attached her to the then existing Territory of Michigan, of which Territory she nominally continued a part until 1836, a period of little more than two years. During the whole of this time, the whole country west, sufficient of itself for a respectable State, was included in the two counties of Dubuque and Des Moines. In each of these two counties there were holden, during the said term of two years, two terms of a county court (a court of inferior jurisdiction), as the only source of judicial relief up to the passage of the act of Congress creating the Territory of Wisconsin. That act took effect the third day of July, 1836, and the first judicial relief under that act was at the April term following, 1837, a period of nine months after its passage; subsequent to which time

there has been a court holden in one solitary county in Western Wisconsin only. This, your memorialists are aware, has recently been owing to the unfortunate disposition[1] of the esteemed and meritorious Judge of our district; but they are equally aware of the fact that had Western Wisconsin existed under a separate organization we should have found relief in the services of other members of the Judiciary, who are at present, in consequence of the great extent of our Territory, and the small number of judges, dispersed at too great a distance and too constantly engaged in the discharge of the duties of their own district, to be enabled to afford relief to other portions of the Territory. Thus, with a population of not less than twenty-five thousand now, and of near half that number at the organization of the Territory [of Wisconsin], it will appear that we have existed as a portion of an organized Territory for sixteen months with but one term of court only."

From these memorialists one gets the impression that the dwellers on the west side of the Mississippi were sorely in need of authorized civil government, that twenty-five thousand people were practically destitute of government. Yet, if you ask the average early settler how this was, he will probably tell you that they had a better government then than they have enjoyed since. They had county governments and local voluntary associations. Their laws were just such as they needed, and were promptly and faithfully executed. Here is an apparent conflict of testimony. The men assembled in Burlington were urging upon Congress the need of a new territorial government west of the Mississippi. They stated their case as strongly as they could. They had in mind especially the more general needs of the settlers, and spoke particularly of a demand for higher territorial courts. They were men who expected to have a personal share in framing the proposed territorial government.

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[1] Indisposition; the judge was sick!

On the other hand the average settler, who will with great emphasis tell you that these first years were the golden age of civil government in Iowa, has in mind especially the local neighborhood government which he himself helped to make, and of which he was a part. If it is of any interest to know what twenty-five thousand Americans will do when left to themselves in a new country, these first few years in the history of Iowa ought not to be neglected.

One part of this history may be easily traced—that of Land Claims. With the exception of the miners of Dubuque nearly all the early settlers in Iowa came to secure homes. The land belonged to the United States. No surveys had been made; there was no legal provision for settlement. How shall each settler be made secure in the possession of his home until such time as the government shall give him a title, and how can he prevent the government from selling the land with all of his improvements to some one else?

It has been said that if three Americans meet to talk over an item of business, the first thing they do is to organize. The pioneers in all parts of Iowa organized Land Leagues, Clubs or Claim Associations. These organizations differed in minor details, but in their main features they were the same.[1] (1). There was a provision as to the amount of land in a

[1] John C. Calhoun, in a speech made in the Senate, Jan. 27, 1838, on a Bill to grant Pre-emption Rights to Actual Settlers, said that "If he was rightly informed the Iowa country had already been seized on by a lawless body of armed men, who had parcelled out the whole region, and had entered into written stipulations to stand by and protect each other—and who were actually exercising the right of ownership and sovereignty over it—permitting none to settle without their leave—and exacting more for the license to settle than the Government does for the land itself," (Calhoun's Works, Vol. III., p. 135). The uniform testimony of the early settler contradicts the statement that any were denied the right to settle or that any license to settle was collected or that more than a small fraction of the land had been claimed; and of course they deny that they were a lawless body of armed men. If one can find any thing else in the paragraph quoted, it may be accepted as true.

"claim." In some cases this was four hundred and eighty acres, in others it was one hundred and sixty acres. There was sometimes a provision as to what part should be prairie and what part timber. (2). There was a provision as to the amount of improvement required to hold the claim in cases where the claim was not occupied. (3). There was a provision as to occupancy. Desertion for a specified time or a failure to make the required improvements worked forfeiture. (4). Claims could be sold to any person approved by the organization, and the buyer had all the privileges and obligations of the original claimant. A deed was given and recorded. (5). Provisions were made for settling disputes between claimants. As the government surveys had not been made, each claimant could have his amount of land, but he could not tell where his lines would be. Valuable improvements were made before the surveys; this naturally gave rise to difficulties and disputes. Provisions for settling these were of different sorts. The members of the organization bound themselves to abide by the decisions of courts established by the association; or difficulties were settled in mass meeting; or special arbiters were chosen to settle special cases; or a neighboring organization was invited to assist in settling a difficulty. In one or another of these ways nearly all cases were adjusted in an orderly way. (6). There were provisions for securing the enforcement of all decisions and for protecting their claims against outside parties.

It is not easy to learn exactly how the decisions of these Claim Associations were enforced. All agree that every man was pledged "to do his duty" in case there was "a difficulty." As to just what this "duty" was there is not a uniformity of testimony. Expulsion from the association, tar and feathers, warning to leave the country, and death, are among the penalties mentioned for violating the laws of the associations. Some of the local historians state that executions occurred, or blood was shed in defence of land claims; but I find no

authentic case of that sort.[1] I find however living witnesses who testify that they were present when tar and feathers were administered to an offender. Others testify that they saw a man knocked down and dragged out of the crowd, who offered a bid at the land sale contrary to the orders of the association.[2]

In the eastern part of the state the Claim Associations usually terminated with the public land sale in the locality. Previous to this public sale no land could be bought. At the land sale, according to United States statute, all land should be sold to the highest bidder. According to the decisions of the associations this land could be sold to no one but the recognized claimant, and it should all be sold at the minimum price, one dollar and twenty-five cents per acre. At the time of these land sales this public land was occupied by thriving towns and villages. Some of it was worth more than a hundred dollars an acre. The supreme moment then for the Association was that of the land sale. Each claimant was expected to be ready with his cash, attend the sale and secure his home. It might be expected that under such circumstances the public land sales would be occasions of great excitement, but the uniform testimony is that they were orderly and quiet. If there was excitement it was internal. Every claimant in the locality covered by the public sale was pledged to be present and "do his duty." It was expected

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[1] The nearest approach to an execution by the authority of the Claim Association that I have met with, is the case of a man who violated the claim laws by pre-empting a claim. He tried to flee the country, was caught by the agents of the association, and was so frightened that he stuck a knife into his own body with the intention, it is believed, of committing suicide. He recovered, however, from the wound.

John C. Calhoun, in the speech already noticed, stated that the lives of several intruders had paid the forfeit.

[2] One minister of the gospel explains to me how he saved a man from "trouble," who had taken a widow's claim, by telling him that he would have "trouble" if he did not do justice by the widow.

that there would be no[1] bids for any land on that day which had not been previously claimed. One month after the sale the land not sold was in the open market and could be bought for a dollar and a quarter per acre. For purposes of greater security to the claimants, all the claims were bidden in by one man, their representative. All the business of the day was between the United States official and the representative of the claimants, who attended the sale to prevent others from bidding. It seldom happened that this was attempted. When it did occur it was the "duty" of the nearest man to "Strike! for his altars and his fires!" to "knock the stranger sensible!" before his bid was recognized. So rare was such an event that nearly every public land sale passed off in a quiet, monotonous way.

In some parts of the state further west, the land came into the market without a public sale.[2] Here the Claim Associations encountered greater difficulties. The pioneers could hold their claims without difficulty until their land became valuable; then, if they did not "enter" the land themselves, it was liable to be taken from them by some person from the east. The Associations were effectual guards against their land being entered by persons living in the country. In such cases the purchaser of an improved claim was often forced to make a deed to the claimant.

If there had been a statute of the United States to the effect that all persons so disposed were privileged to go into

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[1] In cases where the claimants felt secure they allowed outside parties to bid for the land not claimed.

[2] In 1841 Congress passed a general Pre-emption Law giving to the settler the right to purchase at the minimum price ($1.25 per acre), one hundred and sixty acres of land on which he had lived a year and had erected a log cabin. After this date claim associations were formed and continued in Iowa for the purpose of *supplementing* the law. According to the law, timber land might all be taken by those who first arrived. The association divided up the timber-lands into small lots so that each settler should have a portion. Again, the law allowed only one year to the settler in which to purchase his land. The association was much more liberal with him than that.

the territory west of the Mississippi, and there select for themselves lands from the public domain; each neighborhood of actual settlers having full power to adopt rules and regulations for their own government and enforce them as best they could until such time as the United States should provide for them a government; and all claims, contracts, and proceedings of these local governments or contracts made in pursuance of the acts of these local governments should be deemed valid by the United States government whenever said government should be established;—if there had been such a statute of the United States, then the early settlers in Iowa would have been acting in accordance with the letter and the spirit of the law. But there was no such statute.[1] On the contrary, there was an unrepealed statute passed in 1807, forbidding settlements on lands ceded to the United States until authorized by law. There was no law authorizing settlements in Iowa. According to the letter of the law the settlers in Iowa were subject to removal, fine, and imprisonment. This is one of the many cases in our history where "the broad and beaten path of custom leading directly across it (the statute) had obliterated every apparent vestige of its existence."

One of the first acts of the territorial legislature was to legalize the sale of "lands owned by the government of the United States."[2] How could a settler sell lands owned by the United States? He had gone upon the land in violation of a statute of the United States; he had joined a "Claim

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[1] This applies to the period previous to 1841, when the Pre-emption Law was passed.

[2] "All contracts, promises, assumptions or undertakings, either written or verbal, which shall hereafter be made in good faith and without fraud, collusion or circumvention for the sale, purchase or payment of improvements made on the lands owned by the government of the United States shall be deemed valid in law or equity, and may be sued for and recovered as in other contracts." Law of Wisconsin, 1836, p. 23, quoted in Hill *vs.* Smith, Morris, p. 72.

Association" not recognized by law. This Claim Association had made various rules and regulations for appropriating public lands and apportioning them among its members. The only evidence of ownership of those lands was the fact of occupation and the records of the Association. The territorial legislature recognized these acts as legal; the statutes of the United States expressly forbade these acts. There was here a direct conflict between the territorial and the United States statutes. A case involving the validity of the territorial statute was brought before the Supreme Court of Iowa, in July, 1840. Judge Mason gave the decision. The case was Hill *vs.* Smith. Smith had sold Hill a "claim" and taken a note for $1000, dated January 23, 1837. Smith had sued Hill in the lower court and had obtained judgment. The case was carried to the Supreme Court on a writ of error, assigning as errors: (1) "That the note was given for a contract for the purchase of a claim to a tract of the United States lands with the improvements thereon in violation of the provisions of the several acts of Congress upon that subject; (2) That the whole contract for which said writing obligatory was given is contrary to the laws of the United States, and is therefore void."

Judge Mason, of Supreme Court, of Iowa, in giving his decision in the case of Hill *vs.* Smith—(Morris' Reports, p. 70)—spoke as follows: "But the act of Congress of 1807, seems to have been intended merely to prevent the acquirement of title by occupancy, and to authorize the removal of intruders in those cases where public policy should require; but never to disturb the peaceable and industrious, whose labor was adding so much to the public wealth, changing the barren wilderness into fertile fields.[1] . . . But even if the

[1] The action of Congress on the subject of settling territory furnishes a curious and interesting study. The statute of 1807, subjecting trespassers upon the territory of the United States to removal, fine, and imprisonment was by no means a forgotten statute so far as Congress was concerned. It

act was originally intended to prevent all settlements on the public land, and if, under such circumstances, territorial legislation would have been wholly incompetent to render notes &c., collectable which had been given in furtherance of objects illegal under the statute, there is still another matter of serious importance to be considered. Is that law for these purposes still in operation? The act in question was passed 1807, and it is a matter of public history that since that period it has never been exercised to prevent the ordinary settlement of the public lands. . . . Nay, so far from discountenancing such settlements, special encouragements thereto have been offered. In numerous instances rewards have been conferred by acts of Congress, on those who have taken possession of, cultivated and trafficked in the public domain.[1] . . .

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was before Congress many times. It was discussed with much spirit. Laws were passed excepting certain districts from the action of the law. Yet the majority in Congress, notwithstanding the fact that the law was never literally enforced, held that it was a good law, and resisted its abrogation.

[1] The law seems to have been kept on the statute-book by Congress out of deference to a sentiment in the older states that people ought to stay at home and not go gadding about through the wilderness in search of new homes. Generally, when a particular case was brought before Congress where trespassers upon the territory had made for themselves homes, Congress could be persuaded to exempt them from the operation of the law. Congress favored the law but was against its execution.

But, by an unusual spasm of virtue, the Senate, January 16, 1824, by a vote of eleven to thirty-two, decided that Colonel Alexander White should have no exemption from the operation of the law.

This was done after elaborate discussion. The claims common in such cases were set forth on behalf of Col. White, that he had gone upon some land in Louisiana in ignorance of the law of Congress, that he had improved the land and made "the desert to blossom as the rose." In addition to these ordinary claims, there was set up the claim that Col. White had been a brave soldier. General Jackson himself was a member of the Senate and made a vigorous speech on behalf of Col. White, setting forth his eminent services at the battle of New Orleans. According to the vote of the Senate the law should be executed regardless of the character of the individual, that is, Col. White ought to be removed from the territory, fined and imprisoned. But to persons really acquainted with the local conditions this vote subjected Col. White to the inconvenience of forming a "Claim Asso-

"But further than this, governments have been organized by acts of Congress for the express benefit of a community of criminals (agreeably to the notions of the counsel for the plaintiff in error), the effect and evident intention of which was to encourage and facilitate their *illicit* conduct and purposes. It is notorious that when this territory was organized not one foot of its soil had ever been sold by the United States, and but a small portion of it (the half-breed tract) was individual property. Were we a community of trespassers, or were we to be regarded rather as occupying and improving the lands of the government by the invitation and for the benefit of the owner? Were we organized as a colony of malefactors, or shall we not rather absolve the federal government from the charge of such stupendous folly and wanton wickedness?

"Let us suppose that the next week after our territorial organization, the President had directed the marshal to remove with the least possible delay the whole of our twenty-five thousand people. Ought such a command to have been obeyed? We do not ask what would have been the determination of our settlers, but what would the strictest duty have demanded of them? We have no hesitation in saying that such a command would have been altogether illegal and ought not to have been obeyed.

"To make this appear still more evident, let us further suppose that the requisite notice to quit, having been given and disobeyed, the offenders were brought before the proper courts for trial. To say nothing of the utter impracticability of executing such a law, would the courts be justified in giving it efficacy? If so, the great masses of our citizens must be liable to be fined $1.00 each, and might, in addition be hurried off to prison for the period of six months. And for

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ciation," and surrounding the land office on the day of the public sale with stalwart men who would prevent others from bidding upon the land which he had improved.

what? For violating a law of which the great majority knew not the existence,—a law which had lain unexecuted for such a purpose during more than thirty years, and ever since its enactment. Would this be in accordance with the intention of the legislature? If so, the law was intended as a snare. Allurements of the most enticing kind were freely employed to decoy the unsuspecting and the innocent within its reach. Its position and character were concealed by the dust and rubbish of a third of a century; the broad and beaten path of custom leading directly across it had obliterated every apparent vestige of its existence.[1] Suddenly, and when thousands are within its reach, the net is sprung and they are enfolded in its treacherous toils. Whole communities of unoffending citizens find themselves liable to heavy amercements and long incarceration for doing acts which they had every reason to believe were patriotic and praiseworthy; for leading the way in the introduction of wealth, and civilization, and happiness into the almost illimitable west; for sacrificing the comforts and endearments of home, and enduring the hardships and privations, and encountering the diseases of a new and untried country; for building up great communities in the wilderness, enlarging the bounds of empire and vastly augmenting the current of our national revenue. For doing these acts which have redounded so much to the national advantage, done, too, in accordance with the almost express invitation of the national legislature, and when encouragements to western immigration had become a part of our settled national policy, these individuals, where they had every reason to expect rewards—nay, while on the one hand they are actually receiving such rewards, feel themselves on the other condemned to severe and even ignominious punishment. Does the spirit of our institutions justify

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[1] See speech made in the Senate of the United States, by Smith, of Indiana, January 14, 1841, who says, "I consider the pre-emption law merely declaratory of the custom or common law of the settlers."

such stupendous deception and wholesale tyranny? We answer emphatically, NO!"[1]

Then follows an allusion to Empson and Dudley, 'supple instruments of the tyranny of Henry VII.,' who were executed and exposed to infamy because, as Judge Mason would have us believe, they executed too rigidly obsolete and forgotten laws (Hume's Hist. Eng., Vol. III., p. 80). Judge Mason proceeds:

"Fortified by this authority we pronounce it contrary to the spirit of that Anglo-Saxon liberty, which we inherit, to revive without notice, an obsolete statute, one in relation to which long disuse and a contrary policy had induced a reasonable belief that it was no longer in force. If custom can make laws, it can when long acquiesced in, recognized and countenanced by the sovereign power, also repeal them. Such has been the case in the example now before us. We feel, therefore, justified in declaring that the act of March 3, 1807, so far as it would have gone to authorize the removal of the inhabitants of this territory, or their punishment as criminals, is wholly inoperative and void; that it has been repealed by long *non user;* by the establishment of an opposite policy, and by the legislative recognition of wide-spread and long-established customs among the people of the west, which are wholly incompatible with such an operation of this statute. If this measure can be sanctioned, then there is

[1] This whole subject was fully discussed in the Senate of the United States, January, 1838. This was before the land-sales in Iowa, and the condition of Iowa was the exciting cause. Henry Clay, on that occasion advocated strict enforcement of the law requiring all lands to be offered at public auction and sold to the highest bidder. Webster, on the other hand, advocated the passage of a pre-emption law for the benefit of actual settlers. The settlers' claims are clearly stated and ably argued in a speech published in Webster's Works, Vol. V., p. 391. There is a tradition among early settlers of Iowa, that Webster made a speech against them in early times, that he changed his mind and became their great champion after a visit to the west. A part of this tradition is confirmed in Curtis' Life of Webster, Vol. I., p. 574.

nothing to prevent Congress from laying these snares by premeditation."

Judge Mason in rendering his decision speaks like an advocate; some passages remind one of the spirit of Seventy-Six. His decision may be flimsy law, but it is first-class history. It almost takes away the breath of a lawyer to declare that a custom of thirty years' standing can repeal a statute, yet it is a simple fact that the first homestead laws of Iowa were made by little bands of men in the different localities, who had gone upon the lands in violation of a United States statute. These homestead laws were, in the opinion of their makers, better suited for the purposes intended than any laws that Congress had made or could make. They were suited to the special needs of each locality. If the woodlands of the locality were scanty they were parceled out in small quantities so that each should have his portion. If there were special mill privileges these were enjoyed in common. The execution of these laws was effective, thorough, cheap and, for the most part, just. The laws, executions and decisions of the Claim Associations, the original homestead laws of Iowa, came to be recognized as law by all the powers that be.

As already stated, there was not much local government in Iowa except such as the people in the different localities formed for themselves until Iowa was organized under a separate territorial government in 1838. Yet in the acts of the territory of Michigan may be found a record of the establishment of two counties west of the Mississippi River as early as 1834, and each county was made a township. Likewise in the records of the territory of Wisconsin may be found the names of sixteen counties established in Iowa, with provisions for a highly organized township system, but in the actual history of the local institutions of Iowa there is almost nothing to show for these elaborate provisions for townships.

Nor does the discrepancy between statutes and local institutions disappear with the establishment of a separate territo-

rial government for Iowa. In the provisions of the Claim Associations and other local voluntary associations which the early settlers made for themselves, there is little discrepancy between the laws and the actual history. In the local voluntary associations no general provisions were made. Nothing was done which was not demanded by the majority; no measure adopted which was not thoroughly understood by all. But when thirteen men in one house and twenty-six men in another put their heads together for the purpose of setting up local and specific institutions for a numerous, widely scattered and rapidly increasing constituency, drawn together from all parts of the world, accustomed to different sorts of local institutions, there was a difficulty.

The first stroke of legislative proceeding from the territorial Assembly of Iowa was a statute continuing, for the time being, the laws of the territory of Wisconsin. To a well-instructed student of law this meant that there should be in each of the sixteen counties of Iowa a highly-organized and complicated system of township government; but, to the average farmer who lived in these counties, to continue under the laws of Wisconsin meant to continue to take care of themselves under local regulations of their own making. And the farmers of Iowa went right on living under the "laws of Wisconsin" as they understood them.

The early territorial statutes of Iowa are interesting as a study in psychology. From them we may learn how thirty-nine men under given conditions have acted and what they have done.[1] All the certain history we have from these

[1] Professor T. S. Parven, of Iowa City, who was clerk of the Senate in the first Territorial Legislature, gives an interesting account of the inner workings of the Assembly. The members were untrained and inexperienced. They had recently come to the Territory. They knew little about the needs of the people. They had collected copies of the statutes of nearly all the states in the Union. They went wandering about among these statutes copying whatever happened to strike their fancy. There were members from nearly every state in the Union and each felt called upon to get as

official records is the bare fact that a majority of the legislators for some cause voted for certain statutes. It might be supposed that, as these legislators were chosen by the people for the express purpose of making laws for their government, there would be a correspondence between the statutes and the actual experiences of the people, so that, having the laws, you would have also the local institutions of the people. This is far from the truth; there is no reason to believe that the great body of the people ever knew anything about the complicated paper institutions which their representatives made for them. As an instance of discrepancy between statutes and history the early school-laws may be given. If you ask an early settler in Iowa when the state introduced public schools, he will tell you that the public-school system did not become thoroughly established till about 1854 or 1855. But were there not schools earlier than that? Yes, but they were private schools; or, they were partly private and partly public. In each neighborhood, as soon as there were enough children of school-age, a meeting of the citizens was called, a place and plan for a school-house determined upon, a day set for building, and at the appointed time they all came out and built. Then they hired a teacher and kept up the school as best they could. From the earliest territorial statutes one

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large a part of the statutes of his own state enacted into the laws of the new territory as possible.

One member introduced a bill on the subject of *Jeofails*. It was read to the house and voted upon by the members under the impression that it was a private bill for the benefit of "Joe Fails," a man whom they all knew. Some of the members became impressed with the idea that the laws they were making had no earthly relations to the needs of the people so they called upon the Judges who had had experience in the courts of the territory to prepare some laws suited to the actual needs of the people. The Judges complied with this reasonable request. Some needed laws were thus enacted; but, as these facts became known to the men of independent judgment, the theorists of the legislature, in other words, the "Joe Fails" party, they rebelled against this implied impeachment of their ability and refused to ratify the Judge-made laws.

would infer that schools were established in Iowa free to all white persons between the ages of four and twenty-one. Counties were organized into districts on petition of a majority in the proposed district.[1] School districts were elaborately officered with seven officials for each district, and there were minute provisions for the management of schools. According to the statutes of Iowa the territory, and afterwards the state, was abundantly and thoroughly supplied with the privileges of free public schools for all white children. The statutes are abundant and, as they are closely examined, one is convinced that they are not merely formal acts which had made their way into the records and been forgotten; they are real living laws, prepared with great care and revised and made more elaborate at each session of the legislature. Yet, if you turn from these records and study the actual school system of the territory and the state, you find that the free school was a plant of slow growth; that for years there were no free schools; and the great body of our citizens are to-day under the impression that our public-school system dates back only to about 1854.

Professor T. S. Parvin, who was the first man appointed to the Superintendency of Public Instruction in Iowa, states that those early law-makers knew quite well, at the time they framed their laws, that there were no public schools and could not be in the greater part of the state; but they expected to have the schools sometime, and they believed that the passing of good school-laws would have the effect of encouraging immigration. These statutes expressed a longing of the people for a time when there would be seven persons living near enough together on these prairies fitted to

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[1] Schools shall be established in counties free to all white persons between the ages of four and twenty-one.

Officers of school district are: 3 Trustees, 1 Clerk, 1 Treasurer, 1 Assessor, 1 Collector. Duties of each officer are fully given. [Territorial statute, passed Jan., 1839.]

hold school offices and manage a public school in their various neighborhoods. In the meantime such statutes could be made immediately available for purposes of advertisement in the east and thus assist in bringing about the state of society desired.[1]

If there are persons who regard the bare statutes of a new country as a reliable guide to the history of the growth of its local institutions, a careful comparison of the statutes of Iowa with the local institutions of the state will disabuse them of such a notion. The real local institutions of the early settlers of Iowa are not recorded in any statute-books, and many of the institutions recorded in statute-books never had any existence.

The people of Iowa needed homestead laws; they organized claim associations and made for themselves homestead-laws in each neighborhood. They needed schools; they paid no attention to the elaborate system put into their statutes, they built for themselves school-houses and established schools better suited to their needs. They needed cart-roads, and made them for themselves, constructed their rude bridges or provided ferries without regard to any general statute. Sometimes, though not often, a crime was committed and the little community administered such punishment as seemed fit.[2]

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[1] Prof. Parvin writes for me the following: "When Governor Lucas, the first governor of Iowa Territory, had completed his first Message—a message, by the way, the importance of which has never been fully appreciated—he read it to me, then his private secretary, before my copying it for the legislature. When he came to the part relating to Public Schools he paused, and, knowing my interest in the subject (from my having been for a short time assistant editor of a School Journal in Ohio) he remarked, that while the subject might appear to be in advance of the times in our history, having but few children to educate and no funds to support a school system, it was still necessary to inaugurate a system, and upon a proper (the township) basis, and *especially so to inform our eastern friends* that we meant to start out right and build up a good system as fast as the population and wealth of the territory would warrant."

[2] One of the early settlers of Powshiik county looked with covetous eye upon his neighbor's "claim." He wrote to the father of his neighbor's

It is not true that all the local institutions of the state were as tardy in following the lead of the statutes as were the public schools; yet it was a long time before the statutes came to be carefully observed in all local affairs. In the early history of the territory there was provision in the statutes for a highly organized township government after the manner of Michigan, but after extended inquiry I find little evidence that such an institution ever existed in the state. The statutes which provided for the higher courts, the state institutions and the general interests of the state were observed, and, in the case of these, if you have the statute, you have generally the institution. Likewise the counties, as the more immediate agencies of the state, followed closely, in their actual organization and management,

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wife, who lived in Illinois, and told him that his daughter was suffering for lack of food, and advised him take her away, hoping thus to get the "claim" for himself. To this lying document he subscribed the names of the settlers in the vicinity. A man from Illinois soon appeared with the letter and the forged names in his possession. Investigation was made and they found that the woman who was reported in a starving condition had at that time the greater part of an ox in her cabin with meat all in good condition and was literally living on the fat of the land. The liar was arraigned before his enraged neighbors under the charge of slander. If he had not a fair trial he had at least a *long* trial. They devoted three days to the case. At the end of the trial a committee chosen for the purpose reported resolutions to the effect that the defendent was guilty of lying and slander, that he was unworthy of the respect and confidence of honest men, that all the citizens before whom he had been tried bound themselves to have no dealings with him. They would not buy of him nor sell to him. They would not enter his house nor receive him into their houses. They would not protect him from the storm nor warn him of the approach of danger. The resolutions as first reported by the committee contained the words "neither him nor his family." There were three daughters in the family and some of the young men objected to including the family in the "Boycotting" resolutions. The words were stricken out and the resolutions received the unanimous assent of the meeting. I asked Mr. Satchel, to whom I am indebted for this account, how long he felt bound by those resolutions. He replied with great earnestness, "I feel bound by them yet," and the trial was nearly forty years ago.

the statutes providing for them. It is only in the more remote local agencies of the state that the greatest discrepancies exist between the statutes and the institutions. In the town of Grinnell for ten years after its organization the trustees of the township in which the town is located attended to the business of equalizing assessments of town property. Now according to the statute providing for the government of the town, the duty of equalizing assessments is placed in the hands of the town council. The trustees of the township lawfully attended to that business before the town government was organized, but after the organization of the town government they had no legal power over assessments within the corporate limits; yet they went right on doing that work for ten years. Another case, this, where "the broad and beaten path of custom leading directly across the statute had obliterated every apparent vestige of its existence!" This "obliteration" occurred simply because no one concerned in the execution of the law ever took any notice of the statute. A habit of doing a thing in a certain way is likely always to go right on and "obliterate" changes prescribed by a remote body unless there is some strong and vigilant power to follow up the statute and see that the changes are made. It may be right for the state to presume that every one understands the statutes when they are once duly published, but experience does not warrant such a presumption. Printed statutes seem to act upon the mind of the multitude much as does a riddle or a conundrum—intellectual operations are paralyzed; and even when the statutes are laboriously read, they remain dead and unknown laws until explained by experts or until they are embodied or symbolized by external acts or institutions.

The work of local government in Iowa has been variously distributed between town, township, county and school district. Under the laws of the territory of Wisconsin, in 1837, the management of the county business was placed in the hands of three commissioners whose duties were both administrative and judicial. The commissioner-system was con-

tinued in the territory and afterward in the state till 1851, when it was displaced by a county-judge system in which nearly all the county business was transacted by one county judge. In 1861 a district court was empowered to conduct the *judicial* business of the county while *administrative* affairs were assigned to a board of supervisors chosen—one from each civil township. This plan was continued for ten years, when the county business was placed again in the hands of three supervisors elected by the county at large. We have thus completed the circle and returned to the three commissioners minus their judicial functions.

The forms of township government have fluctuated less. Whenever and wherever there has been a township government the characteristic officers have been three trustees and a clerk. In early territorial times the counties were not all divided into townships. The commissioners were authorized thus to divide the county whenever they believed a majority of the electors desired it.[1] Afterwards the law compelled them so to divide the county upon receipt of a petition signed by a majority of the voters. Until 1851 civil townships were by law "bodies corporate and politic." Since that time they have not possessed that quality.

Counties have been the chief agencies in collecting taxes; yet in early times the statutes provided both for the levying and collecting of taxes by civil townships, for local purposes. At the present time local taxes for the repair of roads are voted by the trustees of the township, for the support of schools, by the board of directors of school districts or by the electors of the school district; for incorporated towns and cities, by town or city council or by the electors of the same; for the support of county institutions, by the board of supervisors or the electors of the county; for the support of state institutions, by the General Assembly of the state. These taxes are all voted under limitations imposed by the constitu-

[1] Territorial statutes, 1842.

tion or the statutes of the state, and the amount of the tax voted in each case is given to the county auditor who is clerk of the board of supervisors for the county. The auditor has also placed in his hands the assessment lists. It is the duty of the board of supervisors of the county, to levy upon the county a sufficient sum to meet all the demands for local and state purposes. A county officer collects this tax. For county and state purposes the tax is collected equally from the entire county; for local purposes within the county, the taxes are collected from the different localities as voted by the local board. Assessment or listing of property for purposes of taxation was in early times done by a county officer. It is now in the hands of townships and incorporated towns and cities.

The care of the poor has oscillated between county and township and has become fixed mainly in the hands of the county, yet it is still the duty of the trustees of townships acting as agents of the county to render temporary aid in cases demanding it, and to send the permanently disabled to the county house. All bills are paid by the county.

The holding of general elections was in early times controlled by county officers who created voting precincts within the county. Now, each civil township is made a voting precinct, and township officers have entire charge of general elections. Town and city councils hold municipal elections, and school officers hold elections for choosing school directors.

In early times the care of roads vibrated between county and township; it is now divided between them. The county locates and owns the roads and builds important bridges.[1] The building of smaller bridges and the ordinary grading and repair of roads and bridges is in the hands of the townships. For this purpose the trustees are empowered to divide the township into districts, and, at the general election, the electors

[1] The supervisors of the county decide upon the class of bridges built by the county and the class built by township.

of each road-district select a road-master or supervisor. It is the duty of the road-supervisor to collect a local road-tax and apply it upon the roads. This tax is paid chiefly in labor upon the roads under the direction of the supervisors; a portion, however, is collected in money which is used in building small bridges.

Many of these general statements have been made simply from examination of the laws, they have not all been fully tested by examination of the actual institutions as they existed under the laws.

The early laws of the territory and the state bear testimony to the mixed character of the population. Evidently at times in the legislature there was a disposition to exalt the civil township as a body politic, give it large powers, and invest it with true democratic qualities. But it would seem that the mere fact of abundant room and a disposition to spread out and occupy as much of the land as possible was almost fatal to all democratic tendency in local government. With a sparse population the representative county government seemed much cheaper and more natural. Certain it is that the county gained a decided ascendancy over the township in local affairs, and all local government, whether of county, township, town or city, or school-district, is representative rather than democratic. Our code still gives to the electors of all these local governments some powers over taxation and other matters; but most of these powers are not exercised except in cases of necessity. It is the habit of the people to leave all affairs of local government to the local boards. The moving of a county seat or the voting of a local tax for a railroad are about the only questions that can always be relied upon to bring out a full expression from the electors; but voting taxes and authorizing a local board to issue bonds, the settling of details about the management of schools, though placed by the code in the hands of a general meeting of the electors of the district township are, in fact, generally left to the local board. A school board cannot build a house without being authorized by a vote of the electors of the district at a general

meeting whereof due notice has been given. This general meeting is usually attended by a portion of the school board and such other persons as they can call in at the time. Thus more important business which the law evidently intends shall be attended to by a larger number of those especially interested is often transacted by a *part* of the school board met and organized under the name and style of a "meeting of the electors of the school district." I have myself been waylaid by a school officer and dragged into a room where I found a half-dozen other victims.

"Gentlemen," said the Secretary of the School Board, "this is the annual meeting of the electors of this district, and there is some business which *must* be attended to at this time."

Detained Elector: "I have no time to remain; this is *your business;* will you please make your motions without any speeches or explanations and we will vote just as you wish us to."

Two or three motions were made and voted upon in quick succession and the meeting adjourned in less than five minutes. Out of six hundred electors, six were present and those chiefly against their will. This apathy does not arise from lack of interest in local affairs but from the impression that the business really belongs to the local board. The great body of the electors live in entire ignorance of these powers and duties. They are representative in their thoughts and habits, and they depend upon the boards for the right management of all local affairs. The local boards usually accept these trusts according to the intentions of the electors and really do the work committed to the electors as well as that committed to themselves.

If a proposition should be made to change the code and make the local government entirely representative in form as it seems to be in fact, it would doubtless be objected that there have been special occasions when this power of electors over local affairs has served as a wholesome check upon the local boards, and those times may recur; the law, as it is, does no harm; circumstances may arise where it may do good.

CONSTITUTION AND LAWS

For the Government of the Citizens of Johnson County in making and holding Claims, as adopted March 9, 1839.

ARTICLE I.

Section 1. This association shall be known by the name and title of the Claim Association of Johnson County.

Sect. 2. The officers of this association shall be one President, one Vice President, one Clerk or Recorder of claims, deeds or transfers of claims, seven Judges or adjusters of claims or boundrys, one of whom shall be qualified to administer the oath or affirmation, and whose duty it shall be to attend all judecial courts of the association, and two Marshals—all of whom shall be elected as hereinafter provided and directed.

Sect. 3. The President and Vice President shall be elected annually by ballot of the association, and their term of office shall be for one year, commencing with the eleventh day of March, 1839, and ending with the day preceding said eleventh day of March of each and every year hereafter.

Sect. 4. The President shall have full power to keep order at all meetings of the association, decide on all questions of order, and where the association is equally devided as is custimary in deliberative assemblys and such other powers as is hereinafter expressed and defined and none others.

Sect. 5. The Vice President shall in the absence of the President exercise all the duties, powers and privaleges of the President, and shall be governed by the laws and regulations governing the President.

Sect. 6. The President shall have power to call a meeting of the association at any time he may think public interest demands it, provided all such meetings be called in pursuance of ten days public notice thereof and such public notices specify the time and place of such meeting, and that said public notices be posted at five or more of the most public places in the county.

Sect. 7. The Clerk or Recorder shall be elected annually by ballot of the association for a term of one year, commencing with the eleventh day of March, 1839, and ending with the day preceding said 11th day of March of each and every year hereafter.

Sect. 8. The duties of the Clerk or Recorder shall be to keep a fair record of all proceedings of the association at each and every meeting, record all claims that may be left with him and in the order they may be deposited and indorse the time such claim was handed in for record, and record all transfers or deeds or assignments of deeds regularly and in the order they may be deposited and indorse the same with the time they were deposited and the page they have been recorded on. The Clerk shall have some stated place of residence, and in case of removal be shall give public notice thereof and state where he has removed to. And previous to his entering on the duties of his office he shall apply to the President for a certificate of election and take an oath or affirmation that he will well and truly discharge all the duties of his office without fear, favor or affection to the best of his abilities, and it shall further be the duty of the Clerk to furnish a book for the association and enter all the proceedings in said Book and make all records in said Book and carefully preserve all papers belonging to the association. The Clerk or Recorder may deputize any person to assist or act in his absence but shall be responsible for all acts of said deputy in the capacity of Clerk or Recorder.

Sect. 9. The Judges or adjusters of claims shall be elected annually and for a term of one year commencing with the 11th day of March, 1839, and ending with the day preceding said eleventh day of March of each and every year hereafter. The duties and powers of the judges or adjusters of claims shall be to decide on all questions of dispute relative to the rights of claims or parts of claims as the case may be and settle all disputed lines or boundrys between members of this association or members of this association and any other individuals, and make returns in writing to the Clerk the manner all cases brought before them have been disposed of—any five of the Judges elect that shall compose a court and any three of such court agreeing in any case brought before them shall be a final decission in the case. No evidence shall be received but such as is recognized by the laws of the Territory as legal in common law. And all evidence shall be on oath or affirmation. The judges or adjusters shall be required previous to their entering on the duties of their office, to apply to the President of the association for a certificate of election, and take an oath or affirmation that they will well and truly discharge the duties of their office without fear, favor, or affection to the best of their abilities.

Sect. 10. The Marshals shall be elected as other officers, and their term of office shall commence and expire as the other officers of this association. And their duties shall be to serve all processes that may be handed them, and make return thereof as directed, and to enforce all decissions of the judicial court and all other laws of the association, and they shall have full power to demand the assistance of a sufficient number of the members of this association if they find it necessary to carry all decissions and laws into effect.

ARTICLE II.

Sect. 1. The sallerys of the officers of this association shall be as herein after provided for.

The Clerk or Recorder shall receive Twenty-five cents for Recording each and every claim, and fifty cents for every deed or conveyance to be paid by the persons wishing such record made, and in all cases he may require his fees in advance; and Twelve & a half cents for the privalege of examining his Book, provided honerary members having entered their claims, shall have the privalege of examining said Books for information relative to their own claim free of any charge.

Sect. 2. The Judges shall receive one Dollar & fifty Cents, and the Marshals shall receive One Dollar and Fifty Cents, for every day spent in discharge of the duties of their respective offices.

ARTICLE III.

Sect. 1. All members of the association shall be required in making claims, to stake them off or blaze them in such a manner, that the lines of such claims can be easily traced or followed and all claims thus made in order to be respected must be entered qn record and there as fully and accurately described as practable, giving the names of the creek, river, or branch where such shall be the boundrys on any side, and where bounded by other claims, give the owners name of such claim if known. And where the lands have been surveyed, they shall be required to give the range, Township, and qr. Section as is customary in describing surveyed Lands. And further, persons making claims shall be required to put the initials of their names either on a tree or stake at each corner of their claims. No person shall hold more than 480 acres, or three quarter sections of land by making claim thereto. And this quantity shall in all cases be recognized and constituted a claim, let the same lye in a boddy or detached parcels, provided however that said claim in not in more than three seperate and detached parcels. All persons wishing their claims recorded, shall hand them in to the recorder in writing with their signature there to.

All deeds of conveyance shall be admited to record, and all assignments of Deeds and the first so recorded or admited for Record, shall have the prefference.

Persons purchasing claims or parts of claims, shall in all cases be required before the Clerk to state on honor that the amount specifyed in the deed or transcript is the actual amount paid for such claim or part of claim as the case may be, and that the purchase is valid and in good faith, and that it has not been made to evade the law restricting persons in making claims to 480 acres, or three quarter sections. This clause shall not be so construed as to deprive persons, who sells their claims or a part thereof, taking another or a part as the case may be. Nor shall it be so construed that persons perchasing, shall be deprived of the privalege of making a claim. Nor shall

any person or persons be entitled to make a claim from the fact of their having swaped or exchanged claims. Any person purchasing a claim and refusing to pay for it, shall forfeit all claim there to, and such claim thus forfeited shall revert back to the person selling such claim. All persons having sold or purchased claims previous to the organization of this association, and the adoption of the laws for the government of said association, shall be entitled to all the privaleges and rights the laws of this association extend to those selling or purchasing after the adoption of said laws.

Sect. 2. Any white male person over the age of eighteen, can become a member of this association by signing the laws, rules and regulations, governing the association. No member of the association shall have the privalege of voting on a question to change any article of the Constitution, or laws of the association unless he is a resident citizen of the County and a claim holder. Nor shall any member be entitled to vote for officers of this association, unless they are claim holders. Actual citizens of the County over the age of seventeen who are acting for themselves and dependent on their own exertions and labour for a lively hood, and whose parents doe not reside within the limits of the Territory, can become members of this association, and entitled to all the privaleges of members. No member can be declared elected to an office of the association, unless said person shall have received a majority of the votes of the members present entitled to vote, when such election shall take place. Any law or article of the constitution of this association, may be altered at the Semiannual meetings and at no other meetings, provided however, that three fifths of the members present who are resident citizens of the county and actual claim holders, shall be in favour of such change or ammendment, *except that section fixing the quantity of land that every member is entitled to hold by claim, and that section shall remain unaltered.*

Sect. 3. The semiannual meeting of this association shall take place on the first monday of February and August of each year here after, and the election of all officers shall be had at the February meeting after the first, which first election shall be had immediately after the adoption of the foregoing laws.

Sect. 4. In case of vacancy in any of the offices of the association, the President shall have power to fill such vacancy until the first semianual meeting that may occur after such vacancy may have taken place. And then there shall be a special election held to fill such vacancy, until the annual election.

Sect. 5. All persons who have resided within the limits of the County for Two months shall be recognized and considered citizens of the county.

Sect. 6. Members of the association who are not Citizens of the County, shall be required in making claims to expend in improvements on each claim he or they may have made or may make, the ammount of fifty Dollars within six months of the date of making such claim or claims. And fifty

Dollars every Six Months thereafter until such person or persons become citizens of the County or forfeit the same.

Sect. 7. All persons residing in the County at the adoption of the foregoing laws shall be entitled to the privalege of voting at this meeting, but after this it shall require two months residence to become a citizen of the county.

Sect. 8. All claims made after the adoption of the foregoing laws, shall be registered or offered for record, within ten days after the making thereof. And all persons making claims after the adoption of the foregoing laws shall be required in presenting his or their claim for record, to state on honour before the recorder that such claim or claims has not been previously made, or if made that they have been forfeited by the laws of this association to his or their personal knowledge.

Sect. 9. All resident members whoos claims has been made previous to the adoption of the foregoing laws, shall have the privalege of thirty days to have the same recorded in. And those who have made claims previous to the adoption of the aforegoing laws who are not citizens of the county, shall have ninety days to have the same recorded in. And no person or persons shall have the privalege of registering claims in the name of non resident persons.

Sect. 10. All trials or desputed cases shall be brought before the Judicial Court in the following—Any member of the association or the agent of any member of the association, who is autherized to act as agent in writing for such person or persons believing their rights have been intruded on, shall apply to any one of the seven Judges who compose the Judicial Court, and the Judge so applyed to shall appoint a place and time for a meeting of the court, and in Writing autherize the Marshalls to summons a sufficient number of Judges to attend to compose a court at such place, as he may deem most expedient to hold said court. And further the Judge so applyed to shall in writing autherise the Marshall to summons all persons whoos testimony may be necessary in said case, and to autherise the Marshalls to notify the defendant in such case of the place and time of holding such Court, and summons all witnesses that either of the parties may require. The Court may previous to their proceeding to investigate any case require the plaintiff and defendant, to deposit each a sufficient sum of money in their hands to defray the expense of said suit or the costs of said suit, and should either party refuse to deposit such sum of money, the court may render judgment against such person refusing so to do. The Court shall in all cases brought before them, be governed in their decissions by the laws of this association, equity & Justice.

Sect. 11. Any member refusing to be governed by the laws of the association, or decissions of the court, shall no longer be considered a member, and his name shall be stricken from the association. For the faithful observance and maintanance of all the foregoing laws, we mutaly pledge our honours and subscribe our names hereunto.